

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

TERRANCE ROANE,	:	Case No. 2:22-cv-2768
	:	
Plaintiff,	:	
	:	
vs.	:	District Judge James L. Graham
	:	Magistrate Judge Peter B. Silvain, Jr.
	:	
WARDEN CORRECTIONAL RECEPTION	:	
CENTER, <i>et al.</i> ,	:	
	:	
Defendants.	:	

REPORT AND RECOMMENDATIONS¹

This matter is before the Court on its Order to Show Cause. (Doc. #9).

To date, service of process has not been accomplished on Defendant Jonathon Mills. The docket shows that the summons issued to Defendant Mills on October 4, 2022 was returned unexecuted on November 9, 2022. (Doc. #s 6, 8). There is a written note on the returned envelope indicating that Defendant Mills is “not here any longer.” (Doc. #8, *PageID* #52).

On September 15, 2023, the Court issued an Order to Plaintiff to show cause, in writing and on or before September 29, 2023, why the Court should not dismiss this case for failure to perfect service pursuant to Fed. R. Civ. P. 4(m). (Doc. #9). The Order notified Plaintiff that failure to comply with the terms of the Order may result in a recommendation to the District Judge that this action be dismissed for lack of prosecution. *Id.* To date, Plaintiff has not filed a response to the Order to Show Cause.

¹ Attached is a NOTICE to the parties regarding objections to this Report and Recommendations.

“Federal courts possess certain ‘inherent powers ... to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’” *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 107, 137 S. Ct. 1178, 1186 (2017) (quoting *Link v. Wabash R.R.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386 (1962)). Plaintiff’s failure to respond to the Order to show cause warrants exercise of the Court’s inherent power and dismissal of this case pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute this matter. *See Link*, 370 U.S. at 630-31; *Jourdan v. Jabe*, 951 F.2d 108, 109-10 (6th Cir. 1991).

IT IS THEREFORE RECOMMENDED THAT:

1. This case be **DISMISSED** without prejudice for failure to perfect service;
and
2. The Court certify pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of this Court’s Order would not be taken in good faith.
See McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997).

November 2, 2023

s/Peter B. Silvain, Jr.

Peter B. Silvain, Jr.

United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).